

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

CRAIG MILLER, : Case No. 3:12-cv-366
Plaintiff, : District Judge Timothy S. Black
v. : Magistrate Judge Michael J. Newman
:
ABBOTT LABORATORIES, INC.,
Defendant. :

ORDER GRANTING PLAINTIFF'S MOTION TO AMEND HIS COMPLAINT

**REPORT AND RECOMMENDATION¹ THAT (1) DEFENDANTS' MOTION TO
DISMISS (DOC. 7) BE DENIED AS MOOT; AND (2) DEFENDANTS STEVEN
RIDENOIR, AGATHE BLANCHET AND MINDI RORICK BE DISMISSED WITH
PREJUDICE**

This *pro se* employment discrimination case is now before the Court upon Defendants' motion to dismiss Plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(6). Doc. 7. When Plaintiff failed to respond to Defendants' motion, the Court, acting *sua sponte*, issued a Show Cause Order to Plaintiff. *See* doc. 22. Plaintiff timely responded to the Order, setting forth good cause to excuse his failure to respond to the dismissal motion, and requested leave to file an amended complaint, which he attached as an exhibit (doc. 22-1 at PageID 70-76). For good cause shown, and because justice so requires, the Court **GRANTS** Plaintiff's request to file his amended complaint. *See* Fed. R. Civ. P. 15(a)(2). The Clerk is **ORDERED** to docket the attached amended complaint (doc. 22-1 at PageID 70-76) as "Plaintiff's Amended Complaint."

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

In his amended complaint and attached Equal Employment Opportunity Commission (“EEOC”) charge, Plaintiff complains of racial and disability discrimination, presumably under both Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e *et seq.*, and the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.* The filing of Plaintiff’s amended complaint renders Defendants’ arguments in the dismissal motion moot. Plaintiff’s amended complaint is now on the correct form, and attached thereto is a copy of Plaintiff’s right-to-sue notice issued by the EEOC.² *See* doc. 22-1 at PageID 70-76. Additionally, Plaintiff has dropped his claims against the individual Defendants -- Steven Ridenour, Agathe Blanchet and Mindi Rorick -- and now proceeds solely against Abbott Laboratories, Inc.³

Accordingly, the Court **RECOMMENDS** that:

1. Defendants’ motion to dismiss (doc. 7) be **DENIED AS MOOT**; and
2. Defendants Steven Ridenour, Agathe Blanchet and Mindi Rorick be **DISMISSED WITH PREJUDICE**.⁴

February 8, 2013

s/ **Michael J. Newman**
United States Magistrate Judge

² Plaintiff initially used the general complaint form rather than the one designated for employment discrimination actions.

³ During the preliminary pretrial conference held on February 6, 2013, Plaintiff and counsel for Defendants briefly discussed this pending motion to dismiss, and Plaintiff confirmed that he intended to dismiss his claims against the individual Defendants.

⁴ Individual employees or supervisors -- such as Steven Ridenour, Agathe Blanchet and Mindi Rorick -- are not subject to liability under Title VII or the ADA. *See Hiler v. Brown*, 177 F.3d 542, 545-46 (6th Cir. 1999); *Wathen v. Gen. Elec. Co.*, 115 F.3d 400, 404 n.6 (6th Cir. 1997); *Powell v. Morris*, 184 F.R.D. 591, 596 (S.D. Ohio 1998). Further, there is no indication that Plaintiff asserts any state law claims in his amended complaint.